Filed 3/22/16 Palo Alto Hills Golf & Country Club v. Almasi CA6

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

PALO ALTO HILLS GOLF & COUNTRY CLUB, INC., Plaintiff and Appellant, v. SHAHRIAR ALMASI, et al., Defendants and Appellants.	H041460 (Santa Clara County Super. Ct. No. 1-11-CV-200198)

In this property dispute between adjacent landowners, the trial court determined that plaintiff Palo Alto Hills Golf & Country Club, Inc. (PAHGCC) owned in fee simple a section of land that had been in use by defendants Shahriar and Azita Almasi. The court went on, however, to grant the Almasis an equitable easement in the portion of the encroachment area where their driveway was located as well as another portion encompassing improvements on the Almasis' front yard.

Both parties appeal. PAHGCC challenges the equitable easement, while the Almasis maintain that they obtained title to the disputed portion of land by adverse possession. We find no error, however, and therefore will affirm the judgment.

Background

PAHGCC acquired its Palo Alto lot at 3000 Alexis Drive (Lot 1) by grant deed in 1969. The Almasis purchased their adjacent parcel (Lot 2) at 965 Laurel Glen Drive in 1997 from Kay and Barbara Magleby. The Maglebys, who had bought Lot 2 in 1971, built a residence there, and during the construction they added retaining walls, trees and

shrubs, and a driveway to provide access to the house. They also erected a fence to the east of the house, but by the time the Almasis bought the property, the fence had collapsed; only three of the six fence posts remained upright. To keep both golfers and deer off what they believed to be their property, in approximately 1999 the Almasis erected a welded wire fence running down the length of the property to Laurel Glen Drive.

In 2009, in the course of a construction project at PAHGCC, and noticing an encroachment from another neighbor, PAHGCC commissioned a survey of its property by Mark Helton. That survey revealed other encroachments, including 14,923 square feet (just over one-third acre) of PAHGCC's property that was enclosed by the Almasis' fence. In 2010 PAHGCC requested that the Almasis remove the fence; otherwise it would do so. When the Almasis refused, PAHGCC brought this action.

In its first amended complaint, filed June 24, 2011, PAHGCC alleged that maintaining the fence constituted trespass and private nuisance. In its third cause of action it sought to quiet title to its entire parcel, because the Almasis were claiming "that they have an interest in the portion of Property enclosed by their fence." PAHGCC also requested damages, a declaratory judgment, and an injunction to keep the Almasis from using the property or interfering with the removal of the fence.

In their answer the Almasis admitted the underlying facts—their replacement of the old fence in 1999, their refusal to remove it, and their claim of "ownership of a fee and/or easement interest in the property westerly of the fence." In responding to the quiet title claim and by affirmative defense, the Almasis asserted that they had acquired ownership of the disputed area "by adverse possession, prescriptive easement, and/or an equitable easement."

After testimony consuming three days in December 2012, the court visited the site and accepted written closing arguments by both parties. Both parties objected to the ensuing tentative decision, and the court permitted supplemental briefing. An amended

statement of decision was issued on January 17, 2014, finding PAHGCC to be the record owner of the disputed area. The court found that the Almasis had not met their burden to show that they had paid taxes on the disputed area; hence, they had failed to establish adverse possession. As to their alternative claim of a prescriptive easement, they would not be able to obtain *exclusive* use of the property—which, despite their protests, was "in essence precisely what they [sought]." Instead, the court applied equitable principles and determined that the Almasis were entitled to (1) an equitable easement in the driveway (part of which was in the disputed area), thereby allowing them access to their house; and (2) an equitable easement in the front yard, one fourth to one-third of which was part of the disputed area. The Almasis were enjoined, however, from interfering with PAHGCC's removal of the fence they had erected in the encroachment area.

Each side submitted a proposed judgment as well as objections to the opposing side's proposed judgment. Another site visit took place in April 2014, which enabled the court to assign boundaries in preparation for a new survey. A final judgment was finally issued on July 21, 2014, consistent with the amended statement of decision and incorporating the legal description of the affected parcels. The court found insufficient evidence to support an award of damages, but it did deem PAHGCC to be the prevailing party for purposes of "authorized fees and costs." Both parties filed timely appeals.

Discussion

1. *The Almasis' Appeal*

We first address the issue raised by the Almasis, whether they should have been adjudged the owners of the disputed area by adverse possession. If they are correct, PAHGCC's challenge to the equitable easement is moot. We find no error, however, in the trial court's determination that the Almasis failed to establish all the elements of adverse possession.

Code of Civil Procedure sections 321 through 325[1] set forth the requirements to establish title by adverse possession. The primary point in dispute is whether the Almasis paid the taxes on the disputed area for the requisite five years. Section 325, subdivision (b), states that adverse possession is not established unless it is shown that "the party or persons, their predecessors and grantors, have timely paid all state, county, or municipal taxes that have been levied and assessed upon the land for the period of five years during which the land has been occupied and claimed. Payment of those taxes by the party or persons, their predecessors and grantors shall be established by certified records of the county tax collector."

The trial court in this case found that the Almasis had failed to meet their evidentiary burden to show that they had paid taxes on the disputed area. The Almasis contend that reversal is required because (1) "there was no substantial evidence admitted at trial that the Golf Club paid taxes on the Disputed Land" and (2) "there was direct evidence that the Maglebys and the Almasis each paid all property taxes assessed during their respective periods of ownership," on the disputed area along with their own parcel.

The Almasis' position on appeal with respect to the payment of taxes on the property cannot succeed. Their first point is not well taken because PAHGCC did not have the burden of proof; it had no obligation to prove that it paid taxes on the property, although it evidently did so.[2]

The second point also cannot withstand scrutiny. As this court explained in *In re I.W.* (2009) 180 Cal.App.4th 1517, 1528, "where the trier of fact has expressly or

[1] All further statutory references are to the Code of Civil Procedure except as otherwise specified.

[2] As was the case with the Almasis, the appraiser for the Assesor's Office explained that tax assessments on PAHGCC's property were based on the Assessor's Parcel Map. The general manager of PAHGCC testified that all taxes had been paid on the property, with no delinquencies.

implicitly concluded that the party with the burden of proof did not carry the burden and that party appeals, it is misleading to characterize the failure-of-proof issue as whether substantial evidence supports the judgment. This follows because such a characterization is conceptually one that allows an attack on (1) the evidence supporting the party who had no burden of proof, and (2) the trier of fact's unassailable conclusion that the party with the burden did not prove one or more elements of the case." Here the trial court, as the exclusive judge of the credibility of the evidence, was free to reject the Almasis' evidence as unworthy of credence. Thus, the proper inquiry on appeal is whether the evidence *compels* a finding in favor of the Almasis as a matter of law. (*Ibid*.; cf. *Roesch v. De Mota* (1944) 24 Cal.2d 563, 571 [where plaintiffs failed to prove payment of notes, question on review "is whether the evidence compelled the trial court to find in their favor on that issue"]; see also *Caron v. Andrew* (1955) 133 Cal.App.2d 402, 409 [trial court's finding that appellants failed to meet their burden of proving affirmative defenses must be upheld on appeal unless the evidence compelled the trial court as a matter of law to find these allegations to be true].)

The Almasis have not met this standard. At trial they relied on the testimony of Alfred Carlson, the former tax assessor for Santa Clara County, who had been Assistant Chief Appraiser when the 1976 appraisal was conducted on 965 Glen View Drive, which was then owned by the Maglebys. The appraiser had indicated that the property comprised 50,100 square feet, or 1.1 acre. Another page indicated the acreage as 1.00. This estimate approximated the size of the Magleby/Almasi parcel plus the disputed area. The Almasis add the "reasonable inference" that the driveway would be included in the 1971 house construction permit; another "reasonable inference" would include a retaining wall in the disputed area as the subject of a 1974 permit for a retaining wall; and in a 1979 permit for construction on an existing deck, the lot size was listed as one acre. Thus, the Almasis submit that the Maglebys paid all taxes on not only their lot but also the disputed area and improvements on it.

Carlson also testified, however, that appraisals in the 1970's were not performed using surveys, and none appeared to have been performed on Lot 2 in 1976. The shape of the lot was determined by the Assessor in accordance with the Assessor's Parcel Map. In addition, the documentary evidence indicated that after issuance of the building permit for construction of the residence in 1971, no reassessment was performed until 1997; thus, the building permits relied on by the Almasis do not appear to have been the basis of any tax assessments on the property during the Maglebys' ownership.

The Almasis also sought to convince the court that they, too, had paid taxes on the disputed area. Robert Uchiyama, the senior appraiser who had supervised the appraisal after the Almasis' purchase, testified that he valued the parcel and improvements at $1.2 million. When he visited the property in 1997, however, he did not see any indication that the portion of the driveway that extended to Laurel Glen Drive encroached on PAHGCC's property. Uchiyama explained that the property value in 1998 was based on the purchase price and the Assessor's Parcel Map. His appraisal was not based on any survey, and he acknowledged that when he visited a property he had no sense of the lot size, nor did he attempt to determine where the fences were. Instead, he took an "overall view" of the property, including its location and the condition of the home. If the purchase price appeared to be consonant with the Assessor's Parcel Map, it would be accepted as the property value. In addition, according to surveyor Helton, there was only about a four-inch discrepancy between the original subdivision map for Tract 4346 and the 1969 deed to PAHGCC. It was the subdivision map that Helton used in determining the encroachment onto PAHGCC's Lot 1. He also ascertained that the deed to the Almasis referenced the subdivision map in describing the property they acquired in 1997.

It was within the province of the trial court, as finder of fact, to reject the testimony promoting the inference that the Maglebys and Almasis paid taxes on the encroachment area for the statutory period. Because the court was not compelled as a

matter of law to find in the Almasis' favor on this issue of fact, the court did not err in rejecting their affirmative defense of adverse possession.

The Almasis protest, however, that the court should have applied the equitable defense of laches here, because PAHGCC's delay in bringing this action "severely prejudiced [their] ability to put on the best evidence to support their defenses." "A defendant asserting laches on plaintiff's part must show that plaintiff has acquiesced in defendant's wrongful acts and has unduly delayed seeking equitable relief to the prejudice of defendant. '[M]ere lapse of time, other than that prescribed by [statutes of limitations], does not bar relief.' [Citation.] [¶] The crucial point, however, is that laches does not bar the quieting of title if the party asserting the defense fails to demonstrate that he was in adverse possession of the contested property during the period of delay." (*Gerhard v. Stephens* (1968) 68 Cal.2d 864, 904, fn. omitted.) The equitable theory of laches does not help the Almasis here, as they have not shown that additional documents that were available during the period of the delay would have helped them establish the payment of taxes. The trial court did not abuse its discretion in rejecting the Almasis' assertion of laches in their defense.[3]

2. *PAHGCC's Appeal*

PAHGCC challenges the grant of the two equitable easements in the encroaching portion of the Almasis' driveway and front yard. PAHGCC contends that these easements were "neither legally permissible nor supported by the Almasis' testimony," because there was no showing that they would suffer harm if they lost the use of the disputed area, nor did they supply evidence of the costs they would incur to remove the

[3] *Connolly v. Trabue* (2012) 204 Cal.App.4th 1154, cited by both parties, is not strictly comparable. The issue there was whether laches could be applied to the party asserting a prescriptive easement. The appellate court upheld the finding of the easement but overturned the lower court's application of laches to bar the plaintiffs' acquisition of the easement. (*Id*. at pp. 1162-1164.)

encroaching improvements. "Instead, the only evidence presented by the Almasis was that losing the Disputed Land would be merely inconvenient, unpleasant, or against their desires."

Notwithstanding PAHGCC's assertion that "there is no such thing as an equitable easement," the power to grant an equitable easement in a proper case is long settled, the product of evolving law on trespass, encroachment, and nuisance. (See, e.g., *Christensen v. Tucker* (1952) 114 Cal.App.2d 554, 563 (*Christensen*) [defendant should have been granted "easement in equity," not quiet title to encroachment area]; see also *Hirshfield v. Schwartz* (2001) 91 Cal.App.4th 749, 765 (*Hirshfield*) ["in a proper case, the courts may exercise their equity powers to affirmatively fashion an interest in the owner's land which will protect the encroacher's use"].) The court balances the relative hardships to the parties, with "additional weight . . . given to the owner's loss of the exclusive use of the property arising from her ownership, independent of any hardship caused by the owner's loss of specific uses in a given case." (*Shoen v. Zacarias* (2015) 237 Cal.App.4th 16, 21 (*Shoen*).) Thus, "where the encroachment does not irreparably injure the plaintiff [and] was innocently made, and where the cost of removal would be great compared to the inconvenience caused plaintiff by the continuance of the encroachment, the equity court may, in its discretion, deny the injunction and compel the plaintiff to accept damages." (*Christensen, supra,* at p. 559; accord, *Brown Derby Hollywood Corp. v. Hatton* (1964) 61 Cal.2d 855, 858.) In other words, a court may grant an equitable easement to the defendant in lieu of enjoining the defendant's continuing interference with the plaintiff's ownership rights, if the hardship on the defendant is " 'greatly disproportionate to the hardship caused plaintiff by the continuance of the encroachment and this fact must clearly appear in the evidence and must be proved by the defendant.' " (*Linthicum v. Butterfield* (2009) 175 Cal.App.4th 259, 265 (*Linthicum*), quoting *Christensen, supra,* at p. 563; accord, *Shoen, supra,* at p. 19.)

On appeal, "we must view the evidence in a light most favorable to the prevailing party" and will overturn the trial court's equitable decision only if we find an abuse of the court's discretion such that a manifest miscarriage of justice resulted. (*Linthicum, supra,* 175 Cal.App.4th at p. 267; *Tashakori v. Lakis* (2011) 196 Cal.App.4th 1003, 1008 (*Tashakori*); *Shoen, supra,* 237 Cal.App.4th at p. 19; cf. *Wm. R. Clarke Corp. v. Safeco Ins. Co. of America* (2000) 78 Cal.App.4th 355, 359.) " '[O]ne of the essential attributes of abuse of discretion is that it must clearly appear to effect injustice. [Citations.] Discretion is abused whenever, in its exercise, the court exceeds the bounds of reason, all of the circumstances before it being considered.' " *Denham v. Superior Court* (1970) 2 Cal.3d 557, 566 (*Denham*); *Jhaveri v. Teitelbaum* (2009) 176 Cal.App.4th 740, 749.) The burden is on the complaining party—here, PAHGCC—to show a clear case of abuse, and " 'unless there has been a miscarriage of justice a reviewing court will not substitute its opinion and thereby divest the trial court of its discretionary power.' [Citations.]" (*Denham, supra,* at p. 566.) "When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court." (*Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478-479.)

PAHGCC maintains that the Almasis made "extremely limited use" of the disputed area, especially the portion that lies in the front yard. That portion, it points out, contains no usable structures or material improvements, but only "a few abandoned improvements, including a chicken coop, and some limited and undefined 'irrigation.' " In PAHGCC's view, the easement in the front yard alleviates only an "imagined inconvenience" to the Almasis, which is an insufficient reason to accommodate "their desire to have a larger yard."

The trial court's statement of decision, however, clearly reflects a careful balancing of the parties' interests in light of the evidence presented. It considered PAHGCC's concern about potential loss of development opportunity in the property, but it noted (1) that PAHGCC had already exceeded the percentage of impermeable land

required for development; (2) the encroachments were unlikely to be "an appreciable factor" for development purposes in any event; and (3) PAHGCC's ownership interest in its entire property would not be "appreciably" diminished. The court reasoned that the encroaching portion of the Almasis' front yard could not be used by PAHGCC for development purposes without forcing the Almasis "to literally relocate their approved, pre-existing, primary residential structure (and the retaining wall enclosing their front yard)." More generally, "carving out the front yard encroachment area would appear to all but obliterate standard property lines associated with residential structures . . . [and] take away a significant portion of the front yard that directly abuts the primary residential structure. It is not an overstatement to say that absent an equitable easement or protective interest, Defendants would virtually step out of their house right onto golf course property." The court also had before it testimony from the PAHGCC manager that although there were no current plans to build in the disputed area, construction or rerouting of the golf course could occur in the future.[4] Thus, the court found, denying the Almasis the easement "would fundamentally deprive them of use of a significant portion of the primary useable area that is immediately adjacent to their residence."

The driveway easement was also justified. The court determined, after an express "consideration and weighing" of all relevant circumstances, that the Almasis were "entitled to use their driveway" although a portion of it passed through the encroachment area. The court found it significant that "(1) the driveway is a fixed, structural appurtenance to the residence which was originally constructed for its present use by a prior property owner; (2) it has consistently been used as the sole means of vehicle access to and from the Residential Property; and (3) it appears based on its square footage and

[4] The Almasis testified that even with the disputed area between the golf course and their home, both had been struck by golf balls, though most landed in their pool area. Golf balls also landed on the roof of the house, causing $10,000 to replace broken roof tiles and $50,000 to repair resulting leaks.

location to be of negligible if any use to Plaintiff in the operation of the golf club. It bears noting that the driveway does not directly abut any useable area of the Golf Club Property."

PAHGCC acknowledges that the driveway does include "minor additional improvements . . . (most notably, a decorative wall at the base of the driveway)" and that it "does serve a tangible purpose, namely access, unlike the 'Front Yard' area that was merely a convenience or desirable attribute for the Almasis." It nevertheless asserts that the driveway easement should not have been made exclusive. PAHGCC cites *Tashakori*, *supra*, 196 Cal.App.4th 1003, arguing that an exclusive easement is equivalent to ownership. *Tashakori* is not helpful, however. There the easement allowed the plaintiffs to use a driveway that traveled across a small portion of the adjoining lot without diminishing the value of that lot; without that easement, the plaintiffs would not be able to access their own property. There is no indication that the plaintiffs even sought an exclusive easement, and the court had no reason to make it exclusive because the driveway was already in use by other neighbors. Applying the "relative hardship" test of *Hirshfield*, the appellate court affirmed, noting, among other circumstances, that the plaintiffs would be irreparably harmed without the use of the driveway, the defendants did not use the driveway and would not suffer loss of value in their property, and any future use from a home being built on the plaintiffs' lot would not place a significant burden on the easement. (See also *Linthicum*, *supra*, 175 Cal.App.4th at p. 266 [trial court properly balanced equities where roadway easement provided only access to defendants' parcels and would not affect plaintiffs' right to fully develop their parcel].)

PAHGCC does not posit any harm caused by the exclusive nature of the driveway easement other than as an impediment to PAHGCC members who want to retrieve their

errant golf balls.[5] Indeed, the trial court indicated that the location and "negligible" usefulness of the driveway contravened any inference of harm. On this record we cannot find an abuse of discretion inherent in the court's ruling making the driveway easement exclusive.

Finally, PAHGCC complains that the judgment is ambiguous as to the duration of both easements. In its view, "the law requires" the easements to terminate when the Almasis no longer own or occupy their property. *Hirshfield*, *supra*, 91 Cal.App.4th at p. 757, does not represent such a legal requirement. There it was the trial court that ruled, on the facts before it, that the easement would terminate when the defendants either transferred the property or stopped living there. In upholding that ruling, the reviewing court found substantial evidence to support the restriction, as it was "fashioned on the evidence and equities presented, and narrowly tailored to promote justice." (*Id.* at p. 772.)

The trial court in this case did not grant an unrestricted easement; it limited the continued use of the disputed area to "so long as they preserve its current character, configuration, and use." If the Almasis discontinue the "current use" of the easement, substantially alter its "current construction/design," or "abandon the encroachments," the easement terminates. These conditions were sufficient to adjudicate the dispute between the parties over the encroachment area. Whether a successor owner or occupant of Lot 2 will enjoy the same protective interests is an issue for resolution in a future case.

We thus cannot find any irrational, arbitrary, or capricious exercise of the trial court's equitable powers in its grant to the Almasis of a protective interest in the encroaching portions of the front yard and driveway. (Cf. *Harris v. Superior Court* (1977) 19 Cal.3d 786, 796 [judicial discretion "implies absence of arbitrary

[5] PAHGCC itself pointed out to the trial court that "regardless of any protective interest being granted to Plaintiff, golf balls will likely continue to be hit onto PAHGCC property. They may even hit balls onto Defendants' property. This is simply a risk inherent in owning a property adjacent to a golf course."

determination, capricious disposition or whimsical thinking"].) The court heard extensive testimony, received numerous photographic and topographical exhibits, and even visited the site. Its decision to quiet title to the disputed area retains PAHGCC's ownership rights, while allowing the Almasis access to and reasonable use of their own property. Reversal is not warranted.

Disposition

The judgment is affirmed.

_____

ELIA, ACTING P.J.

WE CONCUR:

_____

BAMATTRE-MANOUKIAN, J.

_____

MIHARA, J.

Palo Alto Hills Golf & Country Club v. Almasi et al.
H041460